

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WAYLON PACHECO,
Petitioner,

v.

No. 1:17-cv-749-WJ-KRS

TODD GEISEN Captain/Warden, Bureau
of Indian Affairs, Office of Justice Services,
Division of Corrections, DANIEL CORIZ,
Governor, Kewa Pueblo, KENNETH AGUILAR,
Lieutenant Governor, Kewa Pueblo, TIMOTHY
BAILON, Tribal Official, Kewa Pueblo, ROGER
CALABAZA, Tribal Official, Kewa Pueblo, in their
Individual and Official Capacities,
Respondents.

ORDER ON REQUEST TO DISMISS

THIS MATTER comes before the Court sua sponte, following a review of Respondent Geisen's Answer to Amended Petition for Writ of Habeas Corpus ("Answer") (Doc. 20). In his Answer, Respondent Geisen argues, *inter alia*, that Petitioner's request for relief is now moot as Petitioner's current detention is by federal order, not tribal order. (Doc. 20, p. 5). Based on this argument, Respondent Geisen asks the Court to dismiss Petitioner's Amended Petition for lack of jurisdiction. (*Id.* at 6).

Respondent Geisen's request, however, is not in the form of a motion and thus it is not properly before the Court for consideration. *See Fed. R. Civ. P. 7(b)(1)* ("A request for a court order must be made by motion."). Further, the Court notes that regardless of Petitioner's current order of detention, it appears that Petitioner may be subject to future custody under the tribal court judgment. And, future custody may be challenged via a petition for writ of habeas corpus. *See 28 U.S.C. § 2254 Rule 1(a)(2).*

IT IS, THEREFORE, ORDERED that if Respondent Geisen seeks a ruling on his request to dismiss Petitioner's Amended Petition, he shall file a written motion formalizing the request within ten (10) days of the entry of this order. If the Court does not receive such a motion within the deadline specified, the cause shall proceed on its merits.

Kevin Sweazea

KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE